

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| AN INVESTIGATION OF TOLL AND ACCESS ) |               |
| CHARGE PRICING AND TOLL SETTLEMENT )  |               |
| AGREEMENTS FOR TELEPHONE UTILITIES )  | CASE NO. 8838 |
| PURSUANT TO CHANGES TO BE EFFECTIVE ) | PHASE II      |
| JANUARY 1, 1984 )                     |               |

O R D E R

Introduction

On October 27, 1986, MCI Telecommunications Corporation ("MCI") filed a motion to reject ULAS<sup>1</sup> tariff filings. Also, on October 27, 1986, MCI filed a complaint against South Central Bell Telephone Company ("SCB"), individually and as ULAS pool administrator,<sup>2</sup> and a motion for expedited hearing on its complaint. On November 24, 1986, the Attorney General filed a response to MCI's motion to reject ULAS tariff filings and MCI's motion for an expedited hearing. On December 4, 1986, Allnet Communications Services, Inc., ("Allnet") filed a petition to intervene in MCI's complaint against SCB. In the alternative,

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<sup>1</sup> Universal Local Access Service. The Commission implemented the ULAS tariff, effective on June 1, 1985, as a means to recover a portion of the non-traffic sensitive cost associated with local exchange network facilities from interLATA carriers rather than from end users in the form of subscriber line charges.

<sup>2</sup> All local exchange carriers are subject to participation in the ULAS pool administered by SCB, except Cincinnati Bell Telephone Company.

Allnet requested that the Commission treat its petition to intervene as a separate complaint against SCB and consolidate it with MCI's complaint. The Commission will address Allnet's petition as a separate complaint against SCB.

Subsequently, on January 22, 1987, the Commission released an Order in this case that rejected busy hour minutes of capacity as a ULAS allocator and extended a 55 percent ULAS discount to non-premium access service.

On February 11, 1987, US Sprint Communications Corporation ("Sprint") filed a petition for rehearing and/or clarification of the January 22, 1987, Order. Also, on February 11, 1987, MCI filed a motion for reconsideration and expedited hearing on the January 22, 1987, Order. On February 26, 1987, AT&T Communications of the South Central States, Inc., ("AT&T") filed a memorandum of law in opposition to Sprint's petition for rehearing and/or clarification. Also, on February 27, 1987, AT&T filed a memorandum of law in opposition to MCI's motion for reconsideration and expedited hearing. On March 3, 1987, the Commission released an Order in this case that addressed Sprint's petition for rehearing and/or clarification and AT&T's memoranda of law, and consolidated MCI's motion for reconsideration and expedited hearing with MCI's motion to reject ULAS tariff filings and complaint against SCB, filed on October 27, 1986.

## Discussion

### MCI Motion to Reject ULAS Tariff Filings

In its motion to reject ULAS tariff filings, MCI moves the Commission to reject ULAS tariff amendments<sup>3</sup> "and order the replacement of the existing ULAS tariff with a non-discriminatory, alternative NTS<sup>4</sup> recovery plan."<sup>5</sup> MCI's motion is based on the contention that the ULAS tariff is unlawful because (1) it discriminates against MCI in a variety of ways and is anticompetitive, and (2) it acts as a type of private tax that guarantees local exchange carriers a profit.<sup>6</sup>

MCI makes a number of arguments concerning the discriminatory and anticompetitive impact of the ULAS tariff, including that:

1. The ULAS tariff discriminates against MCI because it results in ULAS charges that are "five times greater than MCI's market share,"<sup>7</sup> as measured by access minutes of use.<sup>8</sup>

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<sup>3</sup> The ULAS tariff amendments to which MCI refers result from Orders of the Commission dated March 28, 1986, September 15, 1986, and October 2, 1986, in this case. These Orders required local exchange carriers to file revised intrastate access service tariffs and price-out information based on mid-year 1986 interstate access service tariffs. The Commission is reviewing these tariffs for possible intrastate implementation and intrastate implementation could result in an increase in ULAS revenue requirement.

<sup>4</sup> Non-traffic sensitive.

<sup>5</sup> MCI Telecommunications Corporation's Motion to Reject the ULAS Tariff Filings, filed on October 27, 1986, page 1.

<sup>6</sup> Ibid., page 5.

<sup>7</sup> Ibid., page 7.

<sup>8</sup> In the context of this Order, access minutes of use refer to switched as distinct from non-switched usage.

2. The ULAS tariff discriminates against MCI and is anticompetitive because it creates price advantages for AT&T and price disadvantages for MCI.

3. The ULAS tariff discriminates against MCI because it results in ULAS charges that are greater than MCI's market share, as measured by access minutes of use, which, according to MCI, violates equal interconnection provisions of the Modification of Final Judgment.<sup>9</sup>

4. The ULAS tariff discriminates against MCI because it imposes a flat rate rather than a usage rate and the flat rate per channel does "not take account of usage of the channel or of the local exchange network."<sup>10</sup> Furthermore, according to MCI, "because the channel charge bears no relationship to the ILC's<sup>11</sup> use of the local network, MCI has been assessed a charge which has overstated its market share many times over."<sup>12</sup>

5. The ULAS tariff discriminates against MCI because "MCI pays approximately 5¢ per minute to AT&T's 1¢ per minute"<sup>13</sup> of use, which, according to MCI, violates a Modification of Final

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<sup>9</sup> The Modification of Final Judgment was filed on August 11, 1982, in Civil Action No. 82-0192, the United States District Court for the District of Columbia, in the United States of America vs the American Telephone and Telegraph Company and the Western Electric Company, Inc.

<sup>10</sup> MCI Motion to Reject ULAS Tariff Filings, pages 16-17.

<sup>11</sup> InterLATA carrier.

<sup>12</sup> MCI Motion to Reject ULAS Tariff Filings, page 18.

<sup>13</sup> Ibid., page 20.

Judgment requirement that access charges be equally priced. Also, the ULAS tariff discriminates against MCI because "the ULAS revenue requirement is not based upon any rational formula or cost of service methodology,"<sup>14</sup> which, according to MCI, violates a Modification of Final Judgment requirement that access charges be cost justified.

6. The ULAS tariff discriminates against MCI because it results in an overcounting of MCI's channel capacity, an overstatement of MCI's traffic carrying capacity, and ignores MCI's network configuration.

7. The ULAS tariff is anticompetitive because "to the extent MCI is forced to bear a disproportionate share of the ULAS payments, its ability to effectively compete with AT&T is limited."<sup>15</sup>

In addition to its arguments concerning the discriminatory and anticompetitive impact of the ULAS tariff, MCI contends that the ULAS tariff guarantees local exchange carriers a profit. According to MCI, "the ULAS tariff is nothing more than a private tax, disguised as a mandatory offering of service (ULAS) and assessed against the ILC regardless of whether the ILC uses the local network facilities and plant to originate or terminate intrastate interLATA calls."<sup>16</sup>

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<sup>14</sup> Ibid.

<sup>15</sup> Ibid., pages 23-24.

<sup>16</sup> Ibid., page 25.

The Attorney General opposes MCI's motion to reject ULAS tariff filings, stating that "there is no reason to believe that the ULAS charges are impermissably discriminatory against MCI."<sup>17</sup> The Attorney General also states that "the ULAS tariff is a reasonable one and therefore is not discriminatory against MCI as a matter of law."<sup>18</sup>

The Attorney General notes that MCI does not discuss any reasons that might explain differences between MCI's ULAS charges and AT&T's ULAS charges. For example, according to the Attorney General, MCI's "argument makes the assumption that its market share is properly based only on switched access minutes"<sup>19</sup> of use, whereas the ULAS tariff includes both switched and non-switched channel capacity.

The Attorney General also notes MCI's objection to the use of a flat rate to calculate ULAS charges and observes that "the Commission has previously considered at length and rejected this and other arguments against the implementation of the ULAS tariff."<sup>20</sup> Furthermore, the Attorney General notes that costs recovered through the ULAS tariff are non-traffic sensitive costs rather than traffic or usage sensitive costs. In this context,

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<sup>17</sup> Response of the Attorney General to MCI Telecommunications Corporation's Motion to Reject the ULAS Tariff Findings and Motion for Expedited Hearing, filed on November 24, 1986, page 2.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid., page 3.

according to the Attorney General, ULAS charges "are an alternative and reasonable classification which is in compliance with the MFJ<sup>21</sup> goal of universal service."<sup>22</sup>

On the issue that the ULAS tariff discriminates against MCI because it does not consider network efficiencies available to AT&T, the Attorney General responds that "trunking efficiencies available to AT&T are a function of competition and have no bearing upon a fair assessment of charges based upon channel capacity."<sup>23</sup>

Finally, on the issue that the ULAS tariff discriminates against MCI because it guarantees local exchange carriers a profit, the Attorney General responds that "the purpose of the tariff is not to guarantee a profit to the LECs<sup>24</sup> but merely to provide for a fair allocation of access costs among interexchange carriers"<sup>25</sup> and that "the ULAS charges do not guarantee a profit to the LEC because they represent only a portion of the LEC service."<sup>26</sup>

The basic thrust of MCI's motion to reject ULAS tariff filings is that the ULAS tariff discriminates against MCI because

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<sup>21</sup> Modification of Final Judgment.

<sup>22</sup> Response of the Attorney General, page 4.

<sup>23</sup> Ibid.

<sup>24</sup> Local exchange carriers.

<sup>25</sup> Response of the Attorney General, page 4.

<sup>26</sup> Ibid.

it results in ULAS charges that are greater than MCI's market share, as measured by access minutes of use.

As indicated elsewhere in this Order, the purpose of the ULAS tariff is to recover a portion of the non-traffic sensitive cost associated with local exchange network facilities from interLATA carriers on a flat rate basis, rather than from end users in the form of subscriber line charges on a flat rate basis.<sup>27</sup> Since the purpose of the ULAS tariff is to recover a portion of non-traffic sensitive cost from interLATA carriers on a flat rate basis, MCI's argument that the ULAS tariff results in unreasonable discrimination should be supported by at least one of the following grounds:

1. A clear demonstration that relative capacity to utilize local exchange network facilities is discriminatory as a ULAS allocator.

2. A clear demonstration that some other ULAS allocator, such as access minutes of use or market share, is more appropriate to the recovery of ULAS associated costs and is mutually exclusive to relative capacity as a ULAS allocator.

MCI's motion to reject ULAS tariff filings does not demonstrate either of these conditions. Moreover, disagreement on the revenue requirement implications of tariff filings pending

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<sup>27</sup> The Commission has provided rationale for its decision to recover a portion of non-traffic sensitive cost from interLATA carriers rather than from end users on a flat rate basis in Orders in this case dated November 20, 1984, and February 15, 1985, for example.



before the Commission is not a reasonable basis on which to reject such tariff filings.<sup>28</sup> Therefore, in the opinion of the Commission, MCI's motion to reject ULAS tariff filings should be denied, including the request contained therein that the Commission order an alternative non-traffic sensitive cost recovery plan based on access minutes of use.

In general, MCI's arguments in support of its motion to reject ULAS tariff filings are based on the premise that its ULAS charges do not correlate with its market share, as measured by access minutes of use. The Commission will concur that this is the case. However, it should be clear that channel capacity and access minutes of use are different measures of the ability of an interLATA carrier to utilize local exchange network facilities, as the former is related to peak usage and the latter represents only a portion of actual usage. Although it is reasonable to assume some correlation between channel capacity and access minutes of use, it is not reasonable to assume a perfect correlation, due to a number of variables that distort the relationship, including, for example, the relative mix of switched and non-switched traffic carried on an interLATA carrier's network. Moreover, as the Attorney General observes, the Commission has rejected access minutes of use as an appropriate ULAS allocator in past Orders in

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<sup>28</sup> See Footnote No. 3.

this case.<sup>29</sup> Therefore, a lack of correlation between channel capacity and access minutes of use is irrelevant as a basis on which to reject the ULAS tariff.

MCI also contends that the flat rate imposed by the ULAS tariff discriminates against MCI because it does not consider access minutes of use and, according to MCI, usage based pricing is the modern bench mark of reasonable rate-making. The Commission does not agree. In general, usage sensitive rates should be used to recover usage sensitive costs and flat rates should be used to recover non-usage sensitive costs.<sup>30</sup> In this case, as previously discussed, the purpose of the ULAS tariff is to recover a portion of the non-traffic sensitive cost associated with local exchange network facilities from interLATA carriers

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<sup>29</sup> See Footnote No. 27. Also, in brief, the use of access minutes of use as a ULAS allocator would, in effect, shift ULAS revenue requirement to carrier common line charge revenue requirement and, in the opinion of the Commission, the recovery of ULAS revenue requirement through the carrier common line charge mechanism would (1) encourage tariff shopping, as interLATA carriers have an economic incentive to order access services from tariffs with the lowest carrier common line charge, (2) encourage bypass of the switched local exchange network, as interLATA carriers have an economic incentive to avoid the carrier common line charge through the direct connection of end users to interLATA carrier facilities and through the migration of end users from switched to non-switched access services, and (3) unreasonably relieve interLATA carrier bypass and non-switched channel capacity from the burden of any non-traffic sensitive cost recovery.

<sup>30</sup> Indeed, usage sensitive rates may not be appropriate in cases where usage sensitive costs are immaterial or where the implementation of usage sensitive rates would not result in any efficiency gains. This issue is at the heart of the Commission's investigation in Administrative Case No. 285, An Investigation into the Economic Feasibility of Providing Local Measured Service Telephone Rates in Kentucky.

rather than from end users on a flat rate basis. The use of flat rates to recover non-traffic sensitive cost is consistent with generally accepted principles of rate design. Non-traffic sensitive costs are non-usage sensitive costs and exist independent of traffic or usage sensitive costs. Furthermore, MCI's position on this issue can be perceived as inconsistent. Although MCI now contends that non-traffic sensitive costs should be recovered on a usage sensitive basis through access minutes of use, MCI has argued in past filings in this case that non-traffic sensitive costs should be recovered from end users on a flat rate basis in the form of subscriber line charges.<sup>31</sup> MCI has also made inconsistent rate design recommendations to the Federal Communications Commission ("FCC"). Specifically, MCI has recommended that the FCC adopt flat rates to recover the traffic or usage sensitive costs associated with local exchange network facilities.<sup>32</sup> Thus, it appears that MCI's approach to rate design is to recommend rate structures that result in the lowest cost to MCI, irrespective of generally accepted principles of rate design.

Although the Commission does not view the ULAS tariff as discriminatory against any interLATA carrier, it has been

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<sup>31</sup> It should be noted that just as MCI observes that its ULAS charges do not correlate with its market share as measured by access minutes of use, neither would an end user's subscriber line charge correlate with access minutes of use.

<sup>32</sup> FCC Docket No. 78-72, MTS and WATS Market Structure, Phase I, Memorandum Opinion and Order released on April 23, 1985, page 11 and passim.

demonstrated elsewhere in this case<sup>33</sup> that a channel count based ULAS allocator does not directly correlate with an interLATA carrier's ability to utilize local exchange network facilities, due to variables that distort the relationship, including, for example, engineering decisions concerning network configuration that are independent of market share concerns. However, other alternative ULAS allocators that have been considered by the Commission also do not directly correlate with an interLATA carrier's ability to utilize local exchange network facilities. For example, the Commission has considered and rejected a busy hour minutes of capacity based ULAS allocator.<sup>34</sup> Although the Commission will agree that a busy hour minutes of capacity approach provides a better estimate of the ability of an interLATA carrier to utilize local exchange network facilities, a busy hour minutes of capacity approach also ignores variables that distort the relationship, including, for example, an interLATA carrier's possible need to provide extra channel capacity for traffic management purposes, anticipated growth in traffic volumes, and other reasons that may be or are beyond the control of the Commission. Moreover, MCI has failed to demonstrate that the added precision of a busy hour minutes of capacity approach would alleviate its grievances, justify the administrative cost and

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<sup>33</sup> See an Order of the Commission in this case dated January 22, 1987.

<sup>34</sup> Ibid.

other burdens involved, or even that busy hour minutes of capacity data on interLATA channels are universally available.

Also, the Commission has considered and rejected access minutes of use as a ULAS allocator.<sup>35</sup> In addition to the bypass and other concerns that access minutes of use pose as a ULAS allocator, an access minutes of use approach also ignores variables that distort the relationship between channel capacity and an interLATA carrier's ability to utilize local exchange network facilities, including, for example, that channel capacity is related to peak usage rather than total usage and, more importantly, that access minutes of use do not include non-switched usage.

In the opinion of the Commission, the channel count based ULAS allocator is a reasonable one and should remain the allocator, at least until such time as some alternative is proved to be a more appropriate ULAS allocator. The Commission has considered and will continue to consider alternative ULAS allocators that are compatible with the Commission's objectives of equity, efficiency, and universal service. In this regard, as part of its ongoing review of alternative ULAS allocators, on its own motion, the Commission will consider interLATA carrier billed minutes of use as a ULAS allocator in a separate proceeding established in a companion Order in Administrative Case No. 311<sup>36</sup>

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<sup>35</sup> See Footnotes No. 27 and 29.

<sup>36</sup> Investigation of InterLATA Carrier Billed Minutes of Use as a ULAS Allocator.

On a preliminary basis, it appears to the Commission that interLATA carrier billed minutes of use may prove to be easier to administer than a channel capacity based ULAS allocator and may also prove to be consistent with the policy objectives of the Commission. For example, interLATA carrier billed minutes of use may prove to be consistent with the objective of equity in that it appears that interLATA carrier billed minutes of use would not result in any unreasonable rate discrimination, may prove to be consistent with the objective of universal service in that it appears that interLATA carrier billed minutes of use would not encourage bypass of the local exchange network, and may prove to be consistent with the objective of efficiency in that it appears that interLATA carrier billed minutes of use would encourage interLATA competition.<sup>37</sup>

According to MCI, because its ULAS charges exceed its market share, the ULAS tariff results in ULAS charges equal to 5 cents per minute of use in the case of MCI and 1 cent per minute of use in the case of AT&T. Although the information on which MCI based its calculations has not been filed with the Commission,

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<sup>37</sup> The specific issues concerning interLATA carrier billed minutes of use as a ULAS allocator that the Commission wishes to consider in its investigation will be noticed in an Order to be released in the near future. In its inquiry, the Commission expects to consider not only interLATA billed switched minutes of use, but also some mechanism to include interLATA carrier billed non-switched usage, so as not to encourage customer migration from switched to non-switched service offerings and, thus, interLATA carrier avoidance of ULAS charges.

information contained in Commission records indicates that MCI's calculations are more or less correct, except that AT&T's ULAS charges are more on the order of 2 cents per minute of use.

The per minute of use comparison that MCI makes is not necessarily informative. Any time flat charges are divided by usage functions, differences between users will result, assuming differing levels of usage. Nonetheless, the Commission has taken action that will narrow the ULAS-related per minute of use differential between MCI and AT&T through ordering a 55 percent discount on ULAS charges to non-dominant interLATA carriers, of which MCI is one.<sup>38</sup> Moreover, the ULAS-related per minute of use differential between MCI and AT&T will narrow as MCI increases its market share, and could swing in the opposite direction over time.<sup>39</sup>

Also, the rate structure associated with non-traffic sensitive cost recovery includes both ULAS charges and carrier common line charges. Total intrastate non-traffic sensitive access service revenues in 1985 were approximately \$34,557,000. ULAS revenues were approximately \$5,776,000 and carrier common line revenues were approximately \$27,781,000.<sup>40</sup>

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<sup>38</sup> See an Order of the Commission in this case dated January 22, 1987.

<sup>39</sup> Information contained in Commission records indicates that MCI is steadily increasing its market share.

<sup>40</sup> See responses to an information request in this case dated September 15, 1986.

Carrier common line charges are billed on an access minutes of use basis. AT&T is billed a premium carrier common line charge of 5.24 cents per minute of use on virtually 100 percent of its access service usage. MCI is billed the premium carrier common line charge on some access service usage and a non-premium carrier common line charge of 2.36 cents per minute of use on some access service usage.<sup>41</sup> The differential between premium and non-premium carrier common line charges is 55 percent and MCI has consistently argued in various filings in this case that this rate differential is appropriate. Furthermore, assuming that MCI's access service usage is 100 percent non-premium, on a combined basis, including both non-discounted ULAS charges and carrier common line charges, on average MCI is charged approximately 10 cents per minute of use and AT&T is charged approximately 13 cents per minute of use.<sup>42</sup> This and any other overall differential that may be computed will increase as a result of the Commission's recent ordering of a 55 percent discount on ULAS charges to non-dominant interLATA carriers, including MCI.<sup>43</sup>

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<sup>41</sup> Carrier common line rates are somewhat less in the cases of Cincinnati Bell Telephone Company and General Telephone Company of the South. Also, estimates of the mix of premium and non-premium access service usage generated by MCI are highly variable, depending on the jurisdictional basis and combinations of access connections studied.

<sup>42</sup> Assuming that MCI's mix of premium and non-premium access service usage is approximately equal, then MCI and AT&T are charged essentially the same rate of 13 cents per minute of use.

<sup>43</sup> See an Order of the Commission in this case dated January 22, 1987.



On another issue, the Commission does not agree that the ULAS tariff violates Modification of Final Judgment provisions concerning equal interconnection to local exchange network facilities, equal access charge pricing, and cost justified access charges. First, the Modification of Final Judgment requires the former Bell Operating Companies to provide to all interLATA carriers "access, information access, and exchange service for such access on an unbundled, tariffed basis, that is equal in type, quality, and price to that provided to AT&T and its affiliates."<sup>44</sup> The ULAS tariff in no way requires any former Bell Operating Company or other local exchange carrier<sup>45</sup> to provide access services to MCI or any other interLATA carrier that is inferior to that provided to AT&T. Second, ULAS is equally priced, on a channel capacity basis.<sup>46</sup> Third, ULAS revenue requirement is non-traffic sensitive revenue requirement as defined by generally accepted FCC jurisdictional separations and access charge rules. As such, its existence is not arguable and its recovery is cost justified.

Furthermore, the U.S. District Court for the District of Columbia, upon entering the Modification of Final Judgment,

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<sup>44</sup> Modification of Final Judgment, page 3.

<sup>45</sup> It should be noted that the Modification of Final Judgment applies to the former Bell Operating Companies, whereas the ULAS tariff applies to one Bell Operating Company and 19 non-Bell Operating Companies.

<sup>46</sup> Also, see the discussion of this issue in an Order entered in this case on May 1, 1985, page 6.

observed that access charges were within the province of state and federal regulatory authorities. In discussing the impact of divestiture on local exchange service rates, the Court stated that through "access charges, the regulators are free to maintain local rates at current levels or they may so set the charges as to increase or decrease local rates,"<sup>47</sup> and added by way of footnote that:

Although the decree requires the Operating Companies to file "cost justified" tariffs for access charges, it leaves to the regulators the decision as to what costs should be included within this calculation. If the regulators chose to retain the cost allocation presently used in the separations and settlements process, the subsidy from interexchange revenues to local rates will remain at current levels.<sup>48</sup> Under the proposed decree, state regulators will set access charges for intrastate interexchange service and the FCC will set access charges for interstate interexchange service.<sup>49</sup>

Similarly, in a later Opinion on the subject of LATAs, the Court noted the Modification of Final Judgment does not preempt state regulation:

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<sup>47</sup> Civil Action No. 82-0192, Opinion filed on August 11, 1982, pages 67-68.

<sup>48</sup> Like the Court, the Commission is uncertain as to the extent or existence of any such subsidy. Ibid., page 67, footnote no. 160.

<sup>49</sup> Ibid., page 68, footnote no. 161, citations omitted, emphasis added.

The Court has previously noted that intrastate as well as intraLATA regulation is not preempted by the decree and, hence, that state regulatory bodies will control traffic within the LATAs themselves. The Court, therefore, lacks the authority to require the opening up of states and LATAs to internal competition over the objections of the states and their regulatory agencies.<sup>50</sup>

Other similar discussions appear in other Opinions entered by the Court, making it clear that the Modification of Final Judgment was not intended to inhibit and does not preempt state regulatory authority.

Finally, on the issue that the ULAS tariff represents a tax that guarantees local exchange carriers a profit, the Commission agrees with the Attorney General.<sup>51</sup> ULAS compensation is a part of overall revenue requirement and rate design, and no local exchange carrier is guaranteed a profit on an overall basis. Instead, for rate-making purposes, the Commission uses an opportunity rate of return approach that in no way guarantees a profit to any local exchange carrier or other utility from rate case to rate case.

MCI Complaint Against SCB and Motion for Expedited Hearing

In its complaint against SCB, MCI reiterates certain issues raised in its motion to reject ULAS tariff filings, including that:

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<sup>50</sup> Ibid., Opinion filed on April 20, 1983, pages 32-33, footnote omitted, emphasis added.

<sup>51</sup> The specific issue that the ULAS tariff constitutes a tax has been discussed in a past Order in this case dated November 20, 1984, pages 36-37.

1. The ULAS tariff discriminates against MCI and favors AT&T because it results in ULAS charges to MCI that are greater than its market share and ULAS charges to AT&T that are less than its market share, as measured by access minutes of use. Therefore, according to MCI, the ULAS tariff is unlawful and anticompetitive.

2. The ULAS tariff guarantees local exchange carriers recovery of ULAS revenue requirement.<sup>52</sup>

These issues have been discussed elsewhere in this Order and need not be discussed again.

The bases of MCI's complaint against SCB are as follows:

1. The ULAS tariff was implemented before the actual data necessary for implementation was available. Therefore, SCB rendered ULAS bills on a surrogate basis for the period from June, 1985, through February, 1986, which MCI paid under protest. According to MCI, its surrogate ULAS bills were twice its market share, as measured by access minutes of use.

2. In March, 1986, a ULAS true-up occurred for the period from June, 1985, through February, 1986. The true-up resulted in a lump-sum ULAS charge to MCI, which MCI paid under protest. According to MCI, "this retroactive true-up, which is not part of

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<sup>52</sup> This point is somewhat different from the argument made in MCI's motion to reject ULAS tariff filings that the ULAS tariff guarantees local carriers a profit. As such, the ULAS tariff does not guarantee local exchange carriers a profit. However, in effect, the ULAS tariff does guarantee local exchange carriers the recovery of ULAS revenue requirement, just as other tariffs are designed to assure the recovery of associated revenue requirement.

the filed Tariff, and which is not authorized by any Commission Order, in our view constitutes retroactive rate making,"<sup>53</sup> which is "procedurally unlawful."<sup>54</sup>

3. Upon implementation of ULAS billing based on actual data, MCI's ULAS charges increased from twice its market share to five times its market share, as measured by access minutes of use.

In summary form, MCI disputes "both the accuracy and validity of each ULAS bill, including the true-up, and the true-up procedure."<sup>55</sup>

As relief, MCI requests that the Commission:

1. Initiate "an audit to examine the accuracy of AT&T's ULAS reports (and those of other ILCs, if necessary)."<sup>56</sup>

2. Notify "all ILCs that the true-up bills (or credits), as well as the monthly ULAS assessments, are disputed and subject to reassessment following the audit."<sup>57</sup>

3. Appoint "a task force to work out procedures and arrangements for conducting the audit."<sup>58</sup>

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<sup>53</sup> Complaint of MCI Telecommunications Corporation, filed on October 27, 1986, page 3.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid., page 10.

<sup>56</sup> Ibid., page 4.

<sup>57</sup> Ibid. In the opinion of the Commission, MCI's complaint against SCB and this Order should be deemed to be sufficient notice to interLATA carriers and other parties to this case that ULAS bills are subject to dispute, audit, and possible reassessment.

<sup>58</sup> Ibid.

4. Order "refunds to MCI and/or other carriers as indicated following the audit."<sup>59</sup>

5. Order "SCB as Pool Administrator to recalculate the ULAS assessments to date on a proportionate basis using access minutes of use as a means of determining the ULAS payments from June 1, 1985, going forward until this investigation is complete."<sup>60</sup>

6. Order "the Pool Administrator to recover the cost [of the audit] through the ULAS Tariff mechanism."<sup>61</sup>

In addition, MCI requests that the Commission relieve it of the discriminatory effects of the ULAS tariff and adopt an alternative non-traffic sensitive cost recovery plan in place of the ULAS tariff. These issues have been discussed elsewhere in this Order and need not be discussed again, as has the issue of using access minutes of use as a ULAS allocator.

In the opinion of the Commission MCI's complaint against SCB should be dismissed, except insofar as it requests a ULAS audit under applicable provisions of the ULAS tariff and requests the creation of a task force to supervise ULAS audit procedures. Furthermore, the Commission will defer the issue of ULAS refunds and credits based on ULAS audit results, and the issue of an appropriate ULAS funding mechanism to the task force for recommendations.

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<sup>59</sup> Ibid.

<sup>60</sup> Ibid., pages 4-5, footnote omitted.

<sup>61</sup> Ibid., page 14.

Section J3.3 of the ULAS tariff provides that an interLATA carrier can request a ULAS audit. Therefore, in the opinion of the Commission, MCI's request for a ULAS audit should be granted, as a means to resolve MCI's concerns about the accuracy and validity of ULAS channel count reports.

Also, in the opinion of the Commission, a task force should be created to supervise ULAS audit procedures. The ULAS audit task force should consist of interLATA carrier representatives, the ULAS pool administrator, the Attorney General, and designated members of the Commission's staff. These and other interested parties should notify the Commission of their interest in ULAS audit task force participation within 15 days from the date of this Order. The ULAS audit task force should consider the appropriate scope of the ULAS audit, appropriate ULAS audit criteria, the issue of ULAS refunds and credits based on ULAS audit results, the issue of ULAS audit funding, the issue of a ULAS audit agent, and other matters that may arise, and file a report and recommendations with the Commission, as soon as possible.

The Commission implemented the ULAS tariff in an Order in this case dated May 1, 1985, effective on June 1, 1985, after a lengthy comment and hearing process, and after several technical, formal, and informal conferences on various issues. On May 17, 1985, the ULAS pool administrator advised the Commission that actual ULAS channel count data was not available and proposed a surrogate billing procedure, pending interLATA carrier filing of

actual information. According to the ULAS pool administrator, attempts to contact the interLATA carriers on the matter of ULAS channel count data "resulted in the inability to determine when reports may be received,"<sup>62</sup> and "Commission approval, or direction as to other action to be taken, is needed on an immediate basis if we are to implement ULAS billing on June 1st."<sup>63</sup>

On May 20, 1985, the Commission advised interLATA carriers under its jurisdiction "to speed up efforts necessary to furnish the appropriate billing data to South Central Bell as soon as possible."<sup>64</sup> The interLATA carriers were also advised that "the Commission fully intends to implement this tariff and will take whatever steps that are necessary to do so beginning with billing on June 1."<sup>65</sup> The Commission added that:

Accordingly, each of you is hereby advised that unless the appropriate billing data is received by Thursday, May 23, the Commission will authorize South Central Bell to implement its proposal surrogates in the conversion procedures as set out in the May 17 letter in order to meet the billing data.<sup>66</sup>

The ULAS tariff was implemented as scheduled using the surrogate billing procedure suggested by the ULAS pool

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<sup>62</sup> Cruse C. Braswell, Assistant Vice President, Public Affairs, South Central Bell Telephone Company, acting as ULAS pool administrator, transmittal dated May 17, 1985.

<sup>63</sup> Ibid.

<sup>64</sup> Forest M. Skaggs, Secretary, Public Service Commission of Kentucky, transmittal dated May 20, 1985.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.



administrator. The surrogate billing procedure included a ULAS true-up provision. On November 14, 1985, a formal conference was held in this case concerning the status of ULAS payments and the ULAS true-up procedure. At the formal conference, MCI and other interLATA carriers indicated interest in a ULAS true-up based on actual ULAS channel count data, retroactive to June 1, 1985.<sup>67</sup>

In March, 1986, a ULAS true-up occurred, based on actual ULAS channel count data, retroactive to June 1, 1985, as follows:<sup>68</sup>

1. The ULAS true-up for the month of June, 1985, was based on actual ULAS channel count data for the second quarter, 1985.<sup>69</sup>

2. The ULAS true-up for the third quarter, 1985, was based on actual ULAS channel count data for the second quarter, 1985.<sup>70</sup>

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<sup>67</sup> Transcript of the Formal Conference on November 14, 1985, pages 30, 40-42, and passim.

<sup>68</sup> Each interLATA carrier was informed of ULAS true-up procedures in transmittals dated March 4, 1986, from Fred L. Gerwing, Industry Relations Manager, South Central Bell Telephone Company, acting as ULAS pool administrator.

<sup>69</sup> Ibid. Following the ULAS tariff conversion procedures, the ULAS true-up for the month of June, 1985, should have been based on actual ULAS channel count data for the month of January, 1985. However, no interLATA carrier filed actual ULAS channel count data for the month of January, 1985, with the ULAS pool administrator. Therefore, the true-up was based on actual ULAS channel count data for the second quarter, 1985.

<sup>70</sup> Ibid. Following the ULAS tariff conversion procedures, the ULAS true-up for the third quarter, 1985, should have been based on actual ULAS channel count data for the first quarter, 1985. However, no interLATA carrier filed actual ULAS channel count data for the months of January and February, 1985, and only incomplete data was filed for the month of March, 1985. Therefore, the true-up was based on actual ULAS channel count data for the second quarter, 1985.

3. The ULAS true-up for the fourth quarter, 1985, was based on actual ULAS channel count data for the second quarter, 1985, which was the appropriate fourth quarter, 1985, billing basis according to the ULAS tariff conversion procedures.

4. The ULAS true-up for the first quarter, 1986, was based on actual ULAS channel count data for the third quarter, 1985, which was the appropriate first quarter, 1986, billing basis according to the ULAS tariff conversion procedures.

The record is clear that the ULAS pool administrator acted responsibly and well within the bounds of reason to accomplish the ULAS true-up sought by the interLATA carriers. The best available information was used to accomplish the ULAS true-up and the ULAS pool administrator advised the interLATA carriers that, in the event appropriate information was filed, a "second true-up" was possible.<sup>71</sup> Therefore, in the opinion of the Commission, any additional ULAS true-ups must be conditioned on the results of the ULAS audit and, specifically, on the showing of ULAS channel count misreporting.

In addition to its complaint against SCB, MCI filed a motion requesting a hearing on the issues raised in the complaint "at the earliest possible date to consider alternative arrangements to alleviate MCI from this most unjust position"<sup>72</sup> - i.e., MCI's allegedly excessive ULAS bills.

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<sup>71</sup> Ibid. The necessary information has not been filed with the ULAS pool administrator.

<sup>72</sup> Motion of MCI Telecommunications Corporation for Expeditious Hearing, filed on October 27, 1986, page 2.

The Attorney General does not oppose MCI's motion for an expedited hearing, but states that:

...general procedures of the Commission with respect to hearings should be followed in this case, and MCI should be required to submit its proof of discrimination in the actual operation of the ULAS tariff in orderly fashion and with the appropriate<sup>73</sup> discovery schedules prescribed by the Commission.

In the opinion of the Commission, MCI's motion for an expedited hearing on its complaint against SCB should be denied. An expedited hearing is not necessary on the basis that MCI has not proposed an acceptable alternative ULAS allocator. Also, an expedited hearing would be premature on the basis that the Commission has granted MCI's request for a ULAS audit and ULAS audit results are not available.

MCI Motion for Reconsideration and Expedited Hearing

In its motion for reconsideration and expedited hearing, MCI contends that the Commission's Order of January 22, 1987, in this case was improperly restricted to busy hour minutes of capacity as a ULAS allocator and failed to address issues raised in its motion to reject ULAS tariff filings and complaint against SCB, including that:

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<sup>73</sup> Response of the Attorney General, page 3.

1. The ULAS tariff discriminates against MCI and should be modified to allocate ULAS revenue requirement "among the interexchange carriers based upon each carrier's respective access minutes of use."<sup>74</sup>

2. The ULAS tariff discriminates against MCI because it does not consider differences in network configuration that result in a "skewing of the ULAS charges against new or smaller carriers in violation of the Commission's policy to allow fair and equal competition and in violation of Kentucky law."<sup>75</sup>

3. The ULAS tariff discriminates against MCI because it results in ULAS charges that are greater than MCI's market share as measured by access minutes of use<sup>76</sup> and, therefore, all ULAS charges should be "reallocated or allocated based on actual access usage,"<sup>77</sup> retroactive to the ULAS tariff's implementation.<sup>78</sup>

These issues have been discussed elsewhere in this Order and need not be discussed again, except that the Commission will further discuss MCI's allegations concerning burden of proof and network configuration.

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<sup>74</sup> Motion of MCI Telecommunications Corporation for Reconsideration and Expedited Hearing, filed on February 11, 1987, page 2.

<sup>75</sup> Ibid., page 5.

<sup>76</sup> Ibid., pages 7-8.

<sup>77</sup> Ibid., page 10.

<sup>78</sup> Ibid., page 8.

The Commission's Order of January 22, 1987, was limited to the matter of busy hour minutes of capacity as a ULAS allocator because Phase III of this case was established to consider busy hour minutes of capacity as a ULAS allocator. Therefore, the Commission's Order of January 22, 1987, was appropriately restricted to busy hour minutes of capacity as a ULAS allocator. Other matters pertaining to the ULAS tariff have been considered in Phase II of this case, of which this Order is a part.

However, relative to busy hour minutes of capacity as a ULAS allocator, MCI contends that the Commission has imposed an unreasonable burden of proof on MCI to "provide clear evidence that the BHMC<sup>79</sup> concept would provide a fairer assessment of [ULAS] charges among the carriers and to demonstrate that these benefits would offset the additional administrative costs involved."<sup>80</sup> The Commission disagrees that an unreasonable burden of proof has been imposed on MCI. The burden of proof imposed on MCI is the same burden of proof imposed on other public utilities subject to the Commission's jurisdiction and is consistent with Kentucky law.

On the matter of network configuration, MCI contends that the ULAS tariff discriminates against MCI as a result of "failing to take into account the relative size of the carrier's trunk groups,

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<sup>79</sup> Busy Hour Minutes of Capacity.

<sup>80</sup> Order of the Commission in this case dated January 22, 1987, page 3.

and, therefore, failing to take into account the relative ability of each carrier to make use of access services."<sup>81</sup>

The basis of MCI's argument is that large trunk groups are more efficient than small trunk groups and, therefore, a large trunk group can carry more minutes of use per channel than a small trunk group, at the same grade of service. Moreover, according to MCI, AT&T has relatively larger trunk groups than MCI and the other interLATA carriers, which implies that AT&T has a relatively more efficient network in terms of traffic carrying capability.

The Commission has touched upon this argument elsewhere in this Order and directly addressed it in an Order released on January 22, 1987, in this case. The Commission stated:

...it has not been demonstrated that AT&T realizes more BHMCs per channel than Allnet, MCI, and US Sprint, much less whether any difference warrants the additional administrative expenses involved [in adopting BHMC as a ULAS allocator]. It is obvious that AT&T's trunk groups on heavy traffic routes are larger than their competitors'. However, the size of a trunk group is not the only factor in estimating trunk group capacity, since the acceptable grade of service, or blocking level, has a significant impact as well. At a lower grade of service, trunk capacity is greater, if all other factors remain constant. At the present time, only AT&T has a regulated grade of service requirement. In addition, AT&T's "carrier of last resort" responsibilities imply that it might have several small, inefficient routes which other carriers are not required to serve. The combination of grade of service requirements and "carrier of last resort" responsibilities may

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<sup>81</sup> MCI Motion for Reconsideration and Expedited Hearing, page 5.

offset the efficiencies of AT&T's larger trunk groups on heavy traffic routes.<sup>82</sup>

As a matter of engineering principles, a large trunk group is more efficient than a small trunk group, at the same grade of service. However, engineering principles are not the only factors that need to be considered in adopting an alternative ULAS allocator. For example, as discussed elsewhere in this Order, the Commission must also consider the administrative burdens associated with obtaining added precision in gauging channel capacity through the use of busy hour minutes of capacity. A busy hour minutes of capacity based ULAS allocator would impose administrative burdens in the form of engineering studies and the cost of such studies could more than exceed any possible gain. Also, any possible gain that might be apparent from a theoretical point of view could be nullified by the practical impact that AT&T's grade of service requirement and "carrier of last resort" responsibilities have on its network configuration.

MCI also contends that the ULAS tariff discriminates against MCI as a result of "failing to take into account the impact of a carrier's not having a switch located within Kentucky or, in MCI's case, of having a switch located in Kentucky's central LATA, thereby causing a lesser ability to utilize interLATA channels to make use of access services,"<sup>83</sup> as a result of "failing to take

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<sup>82</sup> Order of the Commission in this case dated January 22, 1987, pages 2-3.

<sup>83</sup> MCI Motion for Reconsideration and Expedited Hearing, page 5.

into account the effect of the new or smaller carrier's essentially having to install and maintain two 'separate networks,' one utilizing Feature Group A<sup>84</sup> and the other Feature Group D,<sup>85</sup> to make use of access services,"<sup>86</sup> and as a result of "failing to take into account the unique aspects of the dominant carrier's interexchange network used in conjunction with South Central Bell, and the relative impact this would have on ability to use access services as well as on channel counts."<sup>87</sup> In each instance, MCI contends that the evidence it has presented is uncontroverted.

The evidence to which MCI refers was presented in connection with the Commission's consideration of busy hour minutes of capacity as a ULAS allocator. Since a busy hour minutes of capacity modification to the ULAS tariff would not have alleviated these concerns, they were irrelevant to the Commission's decision on a busy hour minutes of capacity modification and, therefore, did not warrant consideration in the Commission's Order of January 22, 1987, in this case. Essentially, MCI presented a number of perceived problems associated with network configuration without any acceptable solution.

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84 Feature Group A is an access service connection that provides a line side termination to local exchange carrier end offices.

85 Feature Group D is an access service connection that provides a trunk side termination to local exchange carriers end offices.

86 MCI Motion for Reconsideration and Expedited Hearing, page 5.

87 *Ibid.*



At no time has MCI presented these alleged problems associated with network configuration to the Commission accompanied by any viable solution. Previously, MCI has suggested both end user charges and ULAS charges based on access minutes of use as solutions, despite the Commission having indicated that it is fundamentally opposed to both methods as a means of recovering non-traffic sensitive investment. As the Commission has indicated, both methods introduce more difficulties than they purport to solve. To the extent that the interLATA carriers benefit from the existence of the local exchange network, the interLATA carriers should bear a portion of the associated non-traffic sensitive investment. Hence, a shift of the entire non-traffic sensitive investment to end users is not supportable and would be contrary to the Commission's objective of universal service.

Also, as discussed elsewhere in this Order, ULAS charges based on access minutes of use would encourage bypass of the local exchange network and is inappropriate for the recovery of non-traffic sensitive investment. Although a ULAS allocator could be derived from usage data, the use of access minutes of use would have the adverse effect of encouraging interLATA carriers to avoid ULAS charges through migrating from switched access services to nonswitched access services.

In short, MCI has failed to produce evidence that any perceived inequity, whether related to network configuration or

some other variable, justifies any change to the Commission's policy on end user charges or access minutes of use as a ULAS allocator. Instead, it has provided vague and unquantified examples of differences between its network and AT&T's network with assertions that these differences warrant drastic changes to the ULAS tariff.

Finally, in the opinion of the Commission, MCI's motion for reconsideration and expedited hearing should be denied, as all issues in it and in MCI's motion to reject ULAS tariff filings and complaint against SCB have been addressed in this and other Orders of the Commission.

Allnet Complaint Against SCB

Allnet's complaint against SCB reiterates much that is contained in MCI's complaint, including that:

1. Allnet's share of ULAS revenue requirement exceeds its market share, as measured by access minutes of use.
2. As a result of the ULAS true-up in March, 1986, Allnet's ULAS bill "increased approximately five-fold"<sup>88</sup> and its ULAS bill is "approximately five times higher than the level of Allnet's usage of the local exchange network."<sup>89</sup>

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<sup>88</sup> Allnet Petition to Intervene or in the Alternative, Complaint and Motion to Consolidate, filed on December 4, 1986, page 3.

<sup>89</sup> Ibid.

3. The ULAS tariff discriminates against Allnet and in favor of AT&T because it does not consider trunking efficiencies available to AT&T.

4. The ULAS true-up constitutes retroactive rate-making that "has not been authorized by the Commission, nor is it permissible under the ULAS Tariff."<sup>90</sup>

5. Allnet has paid its ULAS bills under protest.

6. The ULAS tariff violates the Modification of Final Judgment because "under the ULAS Tariff, OCCs<sup>91</sup> are not receiving access equal in price to AT&T"<sup>92</sup> and because the ULAS tariff is not cost justified.

Allnet requests that the Commission:

1. Order "SCB to recalculate the ULAS charges based upon utilizing access minutes of use"<sup>93</sup> and that "this recalculation be applied to all ULAS charges on a retroactive basis."<sup>94</sup>

2. Order a ULAS audit "to determine the accuracy of the ULAS charges."<sup>95</sup> In addition, "Allnet believes that the cost of the audit should be recovered via the ULAS Tariff mechanism."<sup>96</sup>

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<sup>90</sup> Ibid., page 4.

<sup>91</sup> Other Common Carriers.

<sup>92</sup> Allnet Complaint Against SCB, page 5.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

The issues raised in Allnet's complaint against SCB have been discussed elsewhere in this Order and need not be discussed again. Accordingly, in the opinion of the Commission, Allnet's complaint against SCB should be dismissed, except insofar as it requests a ULAS audit.

#### Findings and Orders

The Commission, having considered the evidence of record and being advised, is of the opinion and finds that:

1. MCI's motion to reject ULAS tariff filings should be denied, including the request therein that the Commission order an alternative non-traffic sensitive cost recovery plan based on access minutes of use.

2. The channel count based ULAS allocator is a reasonable one and should remain the allocator, at least until such time as some alternative is proved to be a more appropriate ULAS allocator.

3. On its own motion, the Commission should consider interLATA carrier billed minutes of use as a ULAS allocator.

4. MCI's complaint against SCB should be dismissed, except insofar as it requests a ULAS audit under applicable provisions of the ULAS tariff and requests the creation of a task force to supervise ULAS audit procedures.

5. MCI's complaint against SCB and this Order should be deemed to be sufficient notice to interLATA carriers and other parties to this case that ULAS bills are subject to dispute, audit, and possible reassessment.

6. MCI's request for a ULAS audit should be granted, as a means to resolve MCI's concerns about the accuracy and validity of ULAS channel count reports.

7. A ULAS audit task force should be created to supervise ULAS audit procedures.

8. The ULAS audit task force should consist of interLATA carrier representatives, the ULAS pool administrator, the Attorney General, designated members of the Commission's staff, and these and other interested parties should notify the Commission of their interest in ULAS audit task force participation within 15 days from the date of this Order.

9. The ULAS audit task force should consider the appropriate scope of the ULAS audit, appropriate ULAS audit criteria, the issue of ULAS refunds and credits based on ULAS audit results, the issue of ULAS audit funding, the issue of a ULAS audit agent, and other matters that may arise, and file a report and recommendations with the Commission, as soon as possible.

10. Any additional ULAS true-ups should be conditioned on a ULAS audit results showing of ULAS channel count misreporting.

11. MCI's motion for an expedited hearing on its complaint against SCB should be denied, as MCI has not proposed an acceptable alternative ULAS allocator and as the Commission has granted MCI's request for a ULAS audit, and ULAS audit results are not available.

12. MCI's motion for reconsideration and expedited hearing on the Commission's Order of January 22, 1987, should be denied,

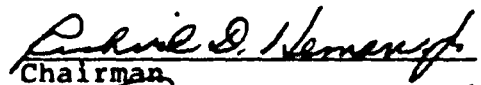
as all issues in it and in MCI's motion to reject ULAS tariff filings and complaint against SCB have been addressed in this and other Orders of the Commission.

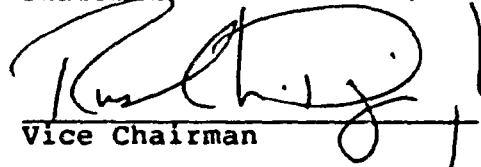
13. Allnet's complaint against SCB should be dismissed, except insofar as it requests a ULAS audit.

Accordingly, each of the above findings is HEREBY ORDERED.

Done at Frankfort, Kentucky, this 30th day of April, 1987.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

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Executive Director